

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	)	
	)	
Petition to Make Housekeeping Revisions and a	)	Docket No. 14-0316
Compliance Change to filed Rate Formula.	)	

**REPLY BRIEF OF COMMONWEALTH EDISON COMPANY**

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Commonwealth Edison Company (“ComEd”), by its counsel, in accordance with the Rules of Practice of the Illinois Commerce Commission (the “Commission” or “ICC”) and the scheduling order of the Administrative Law Judges, submits this Reply Brief.<sup>1</sup>

Although surprising after an initial docket in 2011 to set the formula rate structure and three subsequent formula update cases, the central dispute in this Docket is, at its core, one between the regulatory reforms enacted by the General Assembly in 2011 on the one hand, and Staff’s (and Intervenor’s) proposals that would undermine those very changes on the other. In enacting the Energy Infrastructure Modernization Act (“EIMA”), the General Assembly sought to provide timely and complete recovery of actual prudent and reasonable delivery services costs to a utility that has voluntarily undertaken the investment, job creation, and performance burdens of EIMA, and to bring clarity, standardization, and transparency to the ratemaking process. There is no dispute that ComEd has in all respects satisfied its various obligations under EIMA. Staff’s proposals, however, would unilaterally redefine ComEd’s Commission-approved formula rate structure by disregarding the essential features of the formula rate and the statute itself, and

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<sup>1</sup> Only two parties - - ComEd and Staff - - presented evidence regarding the two issues in Phase II: (1) the definition of “formula rate structure and protocols” as it is used in Section 16-108.5 of the Public Utilities Act (“Act”) “as it applies to ComEd”; and (2) a determination of whether to change any rate formula Schedules or Appendices to reflect the change in ComEd’s depreciation rates between the reconciliation year in the 2014 formula rate update (“FRU”) (2013) and the filing year (2014). The People of the State of Illinois (“AG”) and Citizens Utility Board (“CUB”) (collectively, the “Intervenors”) did not file testimony in Phase II, but submitted Initial Briefs which merely adopt Staff’s position regarding the definition of the formula rate structure and protocols and take no position on whether the depreciation calculation should change.

by seeking an adjustment to the calculation and application of ComEd's depreciation rate that is in conflict with the evidence and past Commission Orders at worst, and wholly unnecessary at best.

Nothing in the evidentiary record or in Staff and Intervenors' briefs provide any principled basis for the Commission to redefine ComEd's formula rate structure and adopt Staff's position that the formula rate "structure", as that term is used in Section 16-108.5(c) and (d) of the Act as added by EIMA, should only include ComEd's Commission-approved rate formula's two summary Schedules (Sch FR A-1 and Sch FR A-1 REC), and exclude all of the related and referenced Schedules and Appendices that are expressly incorporated in the summary Schedules and that together comprise ComEd's Commission-approved formula rate. The Commission has the authority to change the formula rate structure, but it may do so only in a separate "Article IX" docket, and cannot do so in the annual formula rate update (FRU) dockets. To decide otherwise would undermine the certainty, specificity, and transparency that EIMA requires for a formula rate, but which has yet to be realized three years after enactment of EIMA.

Staff's and Intervenors' arguments focus primarily on three incorrect claims: (1) past decisions in ComEd formula rate Dockets have decided that only the two summary Schedules are the formula rate "structure"; (2) the recent Commission decision regarding Ameren's rate formula should be applied to ComEd; and (3) if the Commission agrees with ComEd that the formula rate structure consists of the Schedules and Appendices filed by ComEd in the first formula rate case as modified in that case and subsequent Article IX filings to comply with what the Commission approved, then that somehow will limit the ability of the Commission to review the prudence and reasonableness of costs. There is no merit to any of these claims. The past decisions involving ComEd's rate formula approved ComEd's formula as consisting of Sch

FR A-1 and Sch FR A-1 REC and the supporting Schedules and Appendices incorporated by reference in Rate DSPP; no decision has concluded that ComEd's formula was only Sch FR A-1 and Sch FR A-1 REC. The Ameren decision should not be applied here, because to do so would be contrary to the principles of due process, contravene the objectives of EIMA, and would turn the annual formula rate updates, which are supposed to focus on the prudence and reasonableness of the utility's updated costs into venues for endless revisiting of the approved rate formula. Finally, Staff and Intervenors never have explained how ComEd's position would limit the Commission's review of the prudence and reasonableness of costs under EIMA. Despite this subject having been debated for over three years, they do not point to anything in the Schedules and Appendices that would yield such a result.

The Commission should also reject Staff's position that ComEd's approved formula rate should be modified such that the depreciation rates in ComEd's depreciation study filed in January 2014 would be applied to 2013 plant as well as to 2014 projected plant additions. Staff's position is inconsistent with EIMA's direction that the Federal Energy Regulatory Commission ("FERC") Form 1 be the foundation of the formula rate, and is unnecessary in any event.<sup>2</sup>

**I. STAFF AND INTERVENORS MISCONSTRUE THE LETTER AND SPIRIT OF SECTION 16-108.5 OF EIMA REGARDING "FORMULA RATE STRUCTURE"**

Staff and Intervenors misconstrue the letter and spirit of Section 16-108.5 of EIMA, which provides the platform for them to continue to challenge the structure of ComEd's formula rate in the annual FRU proceedings. *See* Staff's Initial Brief ("IB") at 6-12; AG's IB at 9-14; CUB's IB at 3-6. Under EIMA, however, these challenges to the components of the formula

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<sup>2</sup> In the interest of brevity, ComEd will not respond to each of Staff's and Intervenors' many arguments that contain no citation to law or evidence. Most troubling, they frequently attribute a position to ComEd, which ComEd does not propose or support, and then proceed to argue against it. This is not the least bit helpful to the Commission, who must decide the two issues in Phase II based on the evidentiary record and governing law.

were to be kept out of the FRUs, and instead addressed in Article IX dockets. Indeed, Staff's proposal would defeat the very purpose of the Act by removing the transparency, standardization, and consistency called for by EIMA.

ComEd has now filed three formula rate updates, but Staff and Intervenors continue to struggle to accept that EIMA ratemaking allows utilities to recover their prudent and reasonable costs, to ensure that a "participating utility shall recover the expenditures made under the infrastructure investment program through the ratemaking process, including, but not limited to, the performance-based formula rate and the [EIMA ratemaking and reconciliation] process ...." 220 ILCS 5/16-108.5(b). They struggle to accept that EIMA requires the Commission to establish a performance-based formula rate tariff for ComEd, which "specif[ies] the **cost components** that form the basis of the rate charged to customers with **sufficient specificity** to operate in a **standardized manner** and be **updated annually** with **transparent** information that reflects the utility's actual costs to be recovered during the applicable rate year." (220 ILCS 5/16-108.5(c)) (emphasis added.) And they argue (erroneously) that the Commission did not establish ComEd's formula rate under EIMA in ComEd's 2011 formula rate case, *Commonwealth Edison Co.*, ICC Docket No. 11-0721 (Order May 29, 2012) ("11-0721 Order"), Order on Rehearing Oct. 3, 2012 ("11-0721 Rehearing Order"), and *ICC on Its Own Motion*, ICC Docket No. 13-0386 (Order June 5, 2013).<sup>3</sup>

Staff and Intervenors argue that the Commission should redefine ComEd's formula rate "structure" to mean only summary Schedules Sch FR A-1 and Sch FR A-1 REC, which are set forth in full in ComEd's formula rate tariff, Rate DSSP, to the exclusion of the other Schedules and Appendices expressly referenced and incorporated in the summary Schedules and in

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<sup>3</sup> See ComEd's discussion of the relevant statutory framework and Commission-approved formula structure at pages 6-9 of its Initial Brief.

ComEd's Rate DSPP, but not set forth in the tariff. Doing so allows Staff and Intervenors to create disputes in ComEd's annual FRUs, when no such disputes are to be permitted in those proceedings under EIMA. Neither Staff nor Intervenors advance any legal argument or point to any evidence that would support how Sch FR A-1 and Sch FR A-1 REC alone provide the **specificity, standardization, or transparency** called for under EIMA. There is no such evidence or legal argument to support their view. They just like the two summary Schedules because they are simple and easier to follow. Staff's position cannot survive even a cursory review of those two summary Schedules, which may be found in ComEd Exhibit ("Ex.") 1.01. The two summary Schedules simply incorporate inputs from the other Schedules and Appendices. Without the other Schedules and Appendices, the two summary Schedules essentially do nothing more than list at a high level the components of a revenue requirement under EIMA. By way of comparison, a photograph of a new house is easy to visualize as well, but it is hardly a suitable replacement for a set of blueprints if one wants to know how to build the structure. But this is essentially what Staff proposes when it argues that ComEd's summary schedules (Sch FR A-1 and Sch FR A-1 REC), not the accompanying Schedules and Appendices, should be the entirety of ComEd's formula rate structure.

The widely understood purpose of EIMA was not to define a participating utility's formula rate structure so narrowly (as Staff proposes) that each annual FRU turns into a broad and unpredictable (*i.e.*, what was approved in one FRU, gets challenged the next year) attack on key rate elements and protocols, as was the situation in pre-EIMA rate cases, but that is Staff's and Intervenors' position.

ComEd's position that its formula continue to be defined as the entirety of Sch FR A-1 and Sch FR A-1 REC and all supporting Schedules and Appendices is hardly a "form over

substance” argument as Staff contends. Staff IB at 11. Just the opposite is true. Only Staff and the Intervenor want to define structure so as to yield an essentially meaningless result. Nor has ComEd ever argued that the Commission should simply accept the formula proposed by the Company and merely “check the math” each year. CUB IB at 5. That is a gross distortion of how the formula works. The Commission, Staff, and Intervenor continue to analyze and challenge the prudence and reasonableness of ComEd’s rate updates each year. Certain updated inputs are allowed, while others are disallowed. But to be clear, ComEd has never taken any position other than as expressly supported by EIMA and approved by the Commission: the rate formula under EIMA should provide certainty, specificity and transparency to allow for a set structure and protocols, with annual updates to the rate formula inputs using actual FERC Form 1 data as a foundation. ComEd’s rate formula structure, made up of Sch FR A-1 and Sch FR A-1 REC and all of the related Schedules and Appendices expressly incorporated in Rate DSPP, is consistent with EIMA. ComEd’s annual update filings provide all of the necessary data and documentation required by the formula rate structure set forth in EIMA.

ComEd has always maintained that annually adjusted and reconciled formula ratemaking is at the core of EIMA. Staff and Intervenor have lost sight of the fact that an electric utility like ComEd is eligible for a performance based formula rate only if it has made substantial commitments to invest in new infrastructure and technologies, and to meet specific job creation and performance improvement objectives. This ratemaking treatment is authorized not just in return for those commitments and in recognition of exposure to substantial penalties for failure to achieve performance and job creation goals, but also to make it possible for the utility to make the expenditures required to achieve those performance and job creation goals. The General Assembly recognized the need to, and did, provide for more timely and adequate cost recovery,



through what were intended to be standardized and transparent annual proceedings that continue to allow for prudence and reasonableness reviews, but are less time consuming than traditional Article IX rate cases. Unfortunately, Staff and Intervenors do not favor the certainty, standardization, and transparency which are required under EIMA, but rather long for the days of pre-EIMA “traditional” rate cases.

Staff’s position (as adopted by Intervenors) to arbitrarily define ComEd’s formula rate structure as Sch FR A-1 and Sch FR A-1 REC alone should be rejected as it is contrary to EIMA and is not supported by the Commission’s prior rulings on ComEd’s formula rate.

## **II. STAFF AND INTERVENORS MISCONSTRUE ICC DECISIONS TO SUPPORT THEIR POSITIONS**

### **A. The Commission has Approved ComEd’s Formula Rate**

Staff goes to great lengths to argue that ComEd’s performance-based formula rate, Rate DSPP, was not established through a series of Commission orders, beginning with the 11-0721 Order, as modified by the 11-071 Rehearing Order, through the Order in ICC Docket No. 13-0386 and modified in *ICC On Its Own Motion*, ICC Docket No. 13-0553. Staff IB at 6-12. This simply is not an accurate understanding of those Orders, as ComEd discussed in its Initial Brief (ComEd IB at 7-12), and briefly supplements below.

#### **1. ICC Docket No. 11-0721**

The Commission first approved a rate formula for ComEd in ICC Docket No. 11-0721. Staff and Intervenors ignore the fact that the basis for the Commission’s including only two rate formula schedules in Rate DSPP was a proposal by an Illinois Industrial Energy Consumers (“IIEC”) witness to simplify the tariff because he thought it might make it more understandable to customers. Brinkman Dir., ComEd Ex. 1.0, at 12. The grounds were not based on any Commission finding or ruling regarding what is the scope of the rate formula structure and

protocols. *Id.* The Commission was not required to and did not rule on which Schedules and Appendices constituted the formula rate structure for ComEd. The Commission ultimately directed that a rulemaking should commence, because it would “add clarity to the reconciliations that will take place pursuant to this statute, which should provide greater clarity for utilities, ratepayers and Commission Staff.” Docket 11-0721 Order at 153. The Commission emphasized that “the sooner the rulemaking takes place, the sooner all involved in the rulemaking will familiarize themselves with what formula rate will entail.” *Id.*

Having made the investment and performance commitments that EIMA calls for, ComEd filed its performance-based formula rate tariff, Rate DSPP, in ICC Docket No. 11-0721 in November 2011. Rate DSPP established the formulae for determining ComEd’s cost-based Illinois-jurisdictional revenue requirement and delivery services charges consistent with Section 16-108.5. Rate DSPP also provided for the subsequent annual updates and revenue requirement reconciliations required by Section 16-108.5. The formulae in Rate DSPP were sufficiently specific for the rate-setting and reconciliation processes to operate in a standardized and transparent manner. No party challenged ComEd’s compliance filing.

## **2. ICC Docket No. 12-0321**

Staff and Intervenor also gloss over the fact that in ComEd’s first FRU, ICC Docket No. 12-0321, questions again were raised about use of the formula rate Schedules and Appendices in testimony and as attachments to final Orders, but again, the Commission did not rule on which Schedules and Appendices constituted the formula rate structure, and, instead, assured the parties that “there will be a rulemaking in which ComEd and other interested parties are encouraged to address this and other relevant issues regarding future formula rate filings.” *Commonwealth Edison Co.*, ICC Docket No. 12-0321 (Order Dec. 19, 2012) (“12-0321 Order”) at 105. Staff’s excerpt from the Commission’s Order in Docket No. 12-0321 bolsters ComEd’s position here

more than it helps Staff's argument. Staff IB at 8. In the excerpt quoted by Staff, the Commission states: "Having the fully populated formula rate included as part of the compliance filing rather than attached to this Order will decrease the likelihood of unintended errors." *Id.*, quoting Order, Docket No. 12-0321, December 19, 2013, p. 105. Clearly, by referencing "the fully populated formula rate", the Commission realized that ComEd's formula rate structure was much more than the two summary schedules proposed by Staff.<sup>4</sup>

Given the Commission's repeated promise that a formula rate rulemaking was forthcoming, it is difficult to comprehend how Staff can take the position that the Commission "approved" ComEd's formula as consisting only of Sch FR A-1 and Sch FR A-1 REC. Staff IB at 6; CUB IB at 7-8. The Commission was calling for a rulemaking in ICC Docket Nos. 11-0721 and 12-0321, so clearly it did not share Staff's view that ComEd's two summary schedules comprised the company's formula rate structure. Moreover, Staff and Intervenor ignore the fact that beginning with ICC Docket No. 11-0721 and in connection with each subsequent FRU and housekeeping proceeding, ComEd made a compliance filing with its actual comprehensive formula (Sch FR A-1 and Sch FR A-1 REC and supporting Schedules and Appendices), and no party challenged those filings or what ComEd included in them. Until now, there has been no dispute that what ComEd filed in its annual compliance filings was in fact ComEd's formula rate. Indeed, the fact that no party has challenged ComEd's compliance filings leads to only two conclusions: (1) ComEd's formula rate structure (Sch FR A-1 and Sch FR A-1 REC and all supporting Schedules and Appendices) is consistent with EIMA and Commission orders; or (2) if ever there was to be any modification or re-definition of ComEd's formula rate structure, as Staff

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<sup>4</sup> Staff's argument that ComEd's use of "Executive Summary" to describe Sch FR A-1 and Sch FR A-1 REC is a "new" term is simply wrong. ComEd has consistently used this term or "summary schedule" since ICC Docket No. 11-0721. (ComEd referred to Sch FR A-1 as a "summary" schedule in its direct testimony in the 2011 formula rate case and indicated the same was true of Sch FR A-1 REC. ComEd Cross Ex. 1 at 11.)

and Intervenors now propose, it would occur in the long-contemplated Commission rulemaking. The first conclusion has been unchallenged until this proceeding, and the second conclusion will apparently not be realized.

**3. ICC Docket Nos. 13-0318, 13-0339, and 13-0386**

More recently, the Commission has approved changes to ComEd's rate formula in separate Article IX dockets, which Staff and Intervenors misconstrue. In June 2013, the Commission approved a limited number of "housekeeping" and technical corrections to ComEd's rate formula in ICC Docket No. 13-0339, acting on a separate Section 9-201 filing. Also, in June 2013, the Commission approved an update to ComEd's rate formula and tariffs to comply with the adoption of Public Act 98-0015 (ICC Docket No. 13-0386 (Order June 5, 2013)). The latter filing included more substantial changes to the rate formula as a result of the issues addressed by the General Assembly. In that docket, the Commission held that ComEd's formula "rate sheets, and the revenue requirement calculations filed with and supporting them, are consistent with the provisions of Public Act 98-15 ...." *Commonwealth Edison Co.*, ICC Docket No. 13-0386 (Order June 5, 2013) at 3, 4. The Commission ordered into effect ComEd's filed rate schedule sheets and approved the resulting revenue requirement modifications. *Id.*

Similarly, the Commission has ruled in a formula rate update proceeding that changes to ComEd's formula in a FRU are improper. In ICC Docket No. 13-0318, the Commission ruled that three contested issues, Deferred Income Taxes on Reconciliation Balance, Weighted Average Cost of Capital ("WACC") Gross-Up, and Rate Base for Return On Equity ("ROE") Collar Calculation, were beyond the scope of the annual update and reconciliation proceeding. The December 18, 2013, Order (at 63) states in part:

The proposal to consider and change the structure and protocols of ComEd's formula rate related to the calculation of [deferred income taxes, the calculation of WACC, the ROE Collar Calculation] are

beyond the scope of this Section 16-108.5 (d) annual update and reconciliation proceeding.

Importantly, those three contested issues in ICC Docket No. 13-0318 required changes to ComEd's related Schedules and Appendices, not just rate formula summary Schedules Sch FR A-1 and Sch FR A-1 REC. In fact, none of the three issues changed Sch FR A-1 or Sch FR A-1 REC. All three changed various other Schedules and Appendices within ComEd's rate formula. Contrary to Staff's and Intervenor's position, this Order indicates that the Commission recognized that the formula is not simply defined as Sch FR A-1 and Sch FR A-1 REC.<sup>5</sup>

Based on the series of Orders discussed above, the Commission has set a standardized formula rate structure for ComEd that was intended to be used for years to come. As such, it is essential that the Commission continue to give due weight to the formula rate structure established by the General Assembly, and to the core principle that actual prudent and reasonable costs are to be timely and fully recovered. The Commission should reject proposals, like Staff's and Intervenor's here, which contravene that approved structure.

**B. The Ameren Order is Not Binding on ComEd and Should Not Be Applied Here**

Although they pay lip service that the Commission's Order in ICC Docket Nos. 13-0501/0517 ("Ameren Order") does not apply to ComEd, Staff and Intervenor's argue that the Commission should reach the same conclusion here as it did in the Ameren proceeding. Staff IB at 11-12; AG IB at 3-4; CUB IB at 8-9. Their argument glosses over the troubling evolution of the formula rate structure definition from a promised rulemaking (in various dockets over three years), to resolving the issue in a one-off proceeding involving Ameren (and excluding

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<sup>5</sup> All three issues were ultimately addressed in ICC Docket No. 13-0553, a follow-on proceeding initiated "pursuant to Section 10-113(a) of the Act (220 ILCS 5/10-113(a)) to determine whether the company has complied with Public Act 98-[00]15." ICC Docket No. 13-0553 (Order October 2, 2013) at 3. ComEd ultimately made related rate formula changes pursuant to the Commission's November 26, 2013, final Order in ICC Docket No. 13-0553, in its compliance filing dated December 5, 2013.

ComEd), to the instant Docket, where the proposed redefining of ComEd's formula rate was injected at a late stage in this originally narrow housekeeping proceeding.<sup>6</sup>

According to the Ameren Proposed Order, Staff intended that the Ameren order's conclusion regarding the interpretation of the formula rate be applied to ComEd without ComEd having an opportunity to be heard. Proposed Order at 6 ("Despite Staff's intentions reflected in Ameren Cross Ex. 1SH, the outcome of this proceeding will not be automatically applied to ComEd."). The Ameren Proposed Order properly rejected Staff's proposal, however, and concluded that not only will the results of the Ameren proceeding not be automatically applied to ComEd, but "the Commission will consider the record in [ComEd's] case before deciding whether to do so." *Id.*<sup>7</sup>

ComEd's motions to open an investigation and stay the Ameren order were denied without any discussion (oral or written) of the factual or legal issues. Instead, on August 19, 2014, the Commission issued an Interim Order adopting Staff's proposal that the Commission not open the long-contemplated rulemaking but rather "reopen" the record in this narrow housekeeping Docket for the purpose of broadening the scope and taking evidence and argument in a "Phase 2" on the formula rate structure and depreciation rate issues. Interim Order at 5.

Staff and Intervenors now point to the final Order in the Ameren Docket wherein the Commission simply states that it has "reevaluated" its earlier views on conducting a rulemaking and concludes that "the earlier direction for a formula rate rulemaking is withdrawn," which only

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<sup>6</sup> In fact, the Ameren Proposed Order acknowledged that when Staff (Theresa Ebrey) raised the formula rate interpretation issue in the Ameren docket, it "had been underway for some time and no indication was given that the outcome would be applicable to both AIC and ComEd. Had such an outcome been contemplated at the outset, ComEd may have chosen to participate." Ameren Proposed Order at 6.

<sup>7</sup> As the Proposed Order notes, the Administrative Law Judges had "few viable options" when presented with Staff's out-of-scope interpretation issues in the Ameren docket. Ameren Proposed Order at 2.

highlights the very real due process concerns expressed by ComEd in its motions. CUB IB at 8, *citing* Ameren Order at 5-6.

While Staff and Intervenor see nothing wrong with a scenario whereby the rulemaking promised for three years is summarily “withdrawn” and the results of Ameren’s investigation are imposed on ComEd by creating a Phase II to its ministerial housekeeping Docket, ComEd sees things differently and trusts the Commission will too. The Ameren decision cannot control the decision in this case. The Ameren case was not a rulemaking proceeding and was not initiated as an industry-wide proceeding of general applicability. The facts and circumstances of ComEd’s Commission-approved formula rate were neither an issue in that proceeding nor within the scope of that proceeding. The Commission must decide this case “exclusively on the record for decision” in this case. 220 ILCS 5/10-103. Moreover, it is well established that “orders [of the Commission] are not *res judicata* in later proceedings before it,” *Mississippi River Fuel Corp. v. Illinois Commerce Comm’n*, 1 Ill. 2d 509, 513 (1953), and they certainly cannot bind parties like ComEd, who were not even a party to the other case.

The fact that the Ameren case cannot decide what filed sheets are part of ComEd’s rates is not just a product of the Commission’s jurisdiction and due process. As a factual matter, nothing requires Ameren and ComEd to include the same level of detail on each type of sheet (they do not), or to have identical rate formulae (they do not). *See* Brinkman Reb., ComEd Ex. 2.0, at 14 (discussing material differences between ComEd and Ameren tariffs and Commission response thereto). It is impossible to determine the structure or protocols of ComEd’s Commission-approved formula rate without considering ComEd’s actual formula rate. Staff’s and Intervenor’s assertion that ComEd will somehow be bound to follow and apply the determination in the Ameren case to which it was not a party and in which ComEd’s

Commission-approved formula rate was not at issue makes highly improper presumptions, could not be supported by substantial evidence based on relevant and necessary record evidence, and would violate both the Act's direction that Commission decisions be made exclusively on the record in that case, and due process notice and hearing requirements.

**III. CONFIRMING THAT COMED'S FORMULA RATE STRUCTURE IS SCH FR A-1 AND SCH FR A-1 REC, ALONG WITH ALL REFERENCED SCHEDULES AND APPENDICES, DOES NOT LIMIT ICC AUTHORITY**

Staff and Intervenors also contend that should the Commission confirm ComEd's Commission-approved formula here, the Commission will lose its authority to approve just and reasonable rates for ComEd. Staff IB at 10-11; CUB IB at 5-7. There is no basis in law or the record here to support this contention.

As discussed above, the Commission has approved ComEd's rate formula in Docket Nos. 11-0721, 13-0339, 13-0386 and 13-0553. ComEd's full set of Schedules and Appendices are necessary to achieve the standardization, transparency, and certainty called for by EIMA. For example, in order to use data from ComEd's FERC Form 1 in a manner that is transparent, the rate formula must specify what data to use. Further, for the data to be applied in a standardized manner, it must be set out and defined in the formula. This detail and transparency cannot be seen on Sch A-1 and Sch A-1 REC alone. The other Schedules and Appendices provide this transparency as they contain the references to the FERC Form 1 and to the specific workpapers that contain the source input data. Sch FR A-1 and Sch FR A-1 REC do not contain specific cost inputs, but rather provide a high level summary of ComEd's Initial Rate Year, Reconciliation Year, and Rate Year Net Revenue Requirements. Brinkman Dir., ComEd Ex. 1.0, 5-9.

The rate formula defines the process of calculating each revenue requirement and specifies mathematically how each input affects it. The rate formula is used to calculate the final



revenue requirement – as a result, the formula is used by all parties when presenting and analyzing proposed revenue requirement adjustments or disallowances. Nothing in ComEd’s approved formula or in the annual FRU process does anything to limit the Commission’s authority. ComEd’s proposed updated inputs continue to be scrutinized for prudence and reasonableness just as they always have been.

Moreover, ComEd has always made it clear that it supports a clear identification of all adjustments in an effort to promote transparency. ComEd has never suggested that parties hunt through the rate formula looking for changed inputs that would signify an adjustment, as CUB asserts. CUB IB at 5-6. ComEd has, and always will, provide a plain and clear list of all adjustments.

Using the rate formula makes clear how each proposed adjustment affects the result of input changes, which would not necessarily be apparent with traditional schedules. This mandatory statutory emphasis on standardization and transparency does not sacrifice Commission oversight. As underscored in numerous passages of Section 16-108.5, the General Assembly unambiguously preserved the duty of the Commission to review the prudence and reasonableness of costs and ensure the accuracy of cost and revenue data. Indeed, the law directs that “[t]he Commission shall initiate and conduct an investigation of the tariff in a manner consistent with the provisions of this [Section 16-108.5](c) and the provisions of Article IX of this Act to the extent they do not conflict with this [Section 16-108.5](c).” 220 ILCS 5/16-108.5(c). There simply is no merit to Staff’s and Intervenor’s alarm that the Commission will sacrifice its authority by confirming ComEd’s formula rate.

Finally, and ironically, Staff’s and Intervenor’s position here complicates, not simplifies, the annual FRU process, and results in the expenditure of more, not less, resources by the utility,

Staff and Intervenors suggest that ComEd's position, if approved, will entail unnecessary efforts by parties and the Commission and may delay needed changes to the formula. The opposite is true. There is no evidence or experience to support the notion that handling formula rate updates in the FRU dockets, and handling changes to the formula rate structure, in separate dockets, increases litigation burdens or delays changes to the formula. Indeed, there is no inherent reason a change to the formula cannot be done faster in a separate Article IX Docket, as exemplified by the schedule of Phase 2 of this Docket.

#### **IV. CALCULATION OF DEPRECIATION ON PROJECTED PLANT ADDITIONS**

Only Staff takes the position that the changes that would have to be made to Schedules other than Sch FR A-1 and Sch FR A-1 REC in order to apply the new depreciation rates filed in the FRU filing year to the reconciliation year data should be approved by the Commission in the pending FRU, and not in an Article IX proceeding. Staff IB at 15-22. As ComEd states in its testimony and Initial Brief, however, the definition of formula rate "structure" expressed in EIMA and in past Commission decisions make clear that only an Article IX proceeding would be the proper forum to consider Staff's proposed change to ComEd's calculation of depreciation on projected plant additions. ComEd IB at 14-19. However, it is inappropriate and unnecessary to effect a change as to the reconciliation year based on a change in the depreciation rates after the reconciliation year and in the filing year for rate-setting purposes.

##### **A. Staff Fails in Its Attempt to Distance Itself From Its Prior Agreement With ComEd Regarding The Depreciation Calculation Employed Today**

As discussed in ComEd's Initial Brief (at 15-16), ComEd and Staff engaged in lengthy discussions in ICC Docket No. 11-0721 before reaching a compromise on the methodology to be used in calculating the depreciation for the Initial Rate Year. Thus, ComEd's Commission-established rate formula calculates depreciation for the Initial Rate Year revenue

requirement different than depreciation for the reconciliation revenue requirement. Brinkman Dir., ComEd Ex. 1.0, at 14-15. To the extent ComEd has updated depreciation rates for the initial year, as a result of an updated depreciation study that is performed once every five years and that is filed after the reconciliation year (and thus not reflected in the FERC Form 1 for the reconciliation year), ComEd reflects those new rates in relation to projected plant additions for the Initial Rate Year revenue requirement.

Now, it would appear that Staff's witness would prefer to distance herself from the parties' previous agreement, due in part to findings in an Ameren docket. Staff IB at 15-21. As explained in ComEd's (Ms. Brinkman's) rebuttal testimony, the change to depreciation rates would have an effect on Distribution expense, which differs from Ameren's adjustment, which did not include an impact to Distribution expense. ComEd Ex. 2.0, at 15. Ameren only reflected the changes in depreciation expense (and resulting changes to Accumulated Depreciation and Accumulated Deferred Income Taxes ("ADIT")), not the changes to Distribution expense, in its formula rate changes. These changes to Distribution expense arise from depreciation expense changes related to transportation equipment, which drives changes to Sch FR A-1 and the tariff. Therefore, Staff's proposal stops short of acknowledging the total impact of the depreciation rate change. A full reflection of Staff's proposed depreciation rate change would affect one of the Schedules that even Staff agrees may be changed only in an Article IX docket. Brinkman Reb., ComEd Ex. 2.0, at 14; *see also* ComEd Cross Ex. 1, DR – ComEd → Staff 1.06.

It appears, based on their adjustments to ComEd's proposed revenue requirement, that Staff clearly is aware that there is an impact to ComEd's Distribution expense, and that their proposed adjustments should only impact the Initial Rate Year revenue requirement. Docket No. 14-0312, Staff IB, Appendix A, page 2. However, the result of Staff's proposed change, as

presented in its Initial Brief, would require ComEd to make the adjustment to Distribution expense for both the reconciliation year as well as the Initial Rate Year. In the current formula, the source input for the Distribution Expense amount is “Sch FR C-1, Ln 11”. This amount feeds into both Sch FR A-1 and Sch FR A-1 REC in the exact same way. (*See* ComEd Cross Ex. 1, page 22, Line 1 and page 23, Line 1). Therefore, under the current approved formula, Staff’s proposed adjustment would alter not only the Initial Rate Year revenue requirement, but would also result in a permanent and improper adjustment to the reconciliation revenue requirement.

While it is generally true that a miscellaneous adjustment can be made to Distribution expense as Staff proposes, such an adjustment will flow through the formula to both Sch FR A-1 and Sch FR A-1 REC in the exact same amount since the source for Distribution expense on these two Schedules is the same. Staff fails to recognize that regardless of how one manipulates or adjusts the formula Schedules and Appendices, the only way to provide for a different Distribution Expense amount between Sch FR A-1 and Sch FR A-1 REC is to add a line or change the source on Sch FR A-1. This is yet another example of why Sch FR A-1 and FR A-1 REC alone do not provide enough transparency or information for one to analyze the calculations of the formula. Having to make changes to the remaining Schedules and Appendices that are not carefully thought out in a Section 9-201 proceeding can have unintended consequences that flow through to Sch FR A-1 and Sch FR A-1 REC. Again, Staff fails to appreciate that the entirety of ComEd’s Schedules and Appendices are critical in understanding the formula and not just Sch FR A-1 and Sch FR A-1 REC alone, as Staff and Intervenors propose.

In sum, given Staff’s (Mr. Bridal’s) agreement with ComEd in ICC Docket No. 11-0721, it is problematic that in ComEd’s current FRU proceeding, ICC Docket No. 14-0312, Staff (Ms. Ebrey) proposes to use an alternate calculation to derive the projected depreciation expense for

the Initial Rate Year, which clearly creates new issues and impacts throughout ComEd's formula rate.

**B. Staff Fails To Recognize That The Reconciliation Is Not Limited To Depreciation Expense**

It is evident from Staff's Initial Brief that Staff is taking too narrow a view on what encompasses the reconciliation. Staff IB at 22. In fact, the projected depreciation expense is only one input of many into the total revenue requirement calculation. The formula rate uses FERC Form 1 balances for both the reconciliation and Initial Rate Year calculations (with limited exceptions directed by the statute or by the Commission) with a later reconciliation as to the rate year (the year in which the rates being set are in effect) for those amounts that are under- or over-collected. Many factors can weigh into whether a reconciliation balance results in an over- or an under-collection. Simply focusing on one component of the calculation leads to a skewed result that doesn't take into account other factors.

Further, considering the infrequency of depreciation rate adjustments, the impact to the already approved formula structure, and the fact that the Initial Rate Year calculation is an estimate that will ultimately be reconciled in any event, it is unnecessary to change the calculation of depreciation expense related to the Initial Rate Year as Staff now proposes. Brinkman Dir., ComEd Ex. 1.0, at 19.

In sum, the current methodology used to calculate projected depreciation expense should continue to be used in ComEd's formula rate update cases. The Initial Rate Year revenue requirement will be reconciled using actual FERC Form 1 data for that year, as required by EIMA. Brinkman Reb., ComEd Ex 2.0, at 16; *see also* ComEd Cross Ex. 1, DR – ComEd → Staff 1.05. Further, ComEd performs depreciation studies once every five years, thus ComEd

depreciation rates will more often than not be the same for the Reconciliation Year as well as the Initial Rate Year. There is no reason to adopt Staff's proposed change in methodology.

## **V. CONCLUSION**

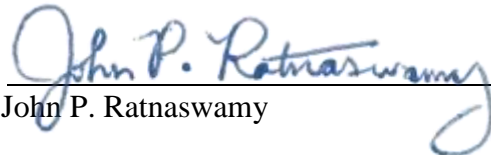
ComEd urges the Commission to reject on-going efforts to arbitrarily redefine ComEd's Commission-approved formula rate which result in annual litigation of formula issues in FRUs. If the Commission analyzes the formula rate definitional issue as it applies to ComEd, it should conclude that ComEd's formula rate structure consists not only of summary Schedules Sch FR A-1 and Sch FR A-1 REC, but also of the entire body of Schedules and Appendices expressly incorporated by reference in Rate DSPP, which have been filed and unchallenged in numerous compliance filings. Staff and Intervenor offer no principled basis for redefining ComEd's formula rate structure as merely the two summary schedules, Sch FR A-1 and Sch FR A-1 REC, to the exclusion of the other Schedules and Appendices.

The Commission also should approve ComEd's continued use of its current approved formula rate methodology to calculate depreciation for the Initial Rate Year in ComEd's formula rate update cases. This calculation was litigated in ICC Docket No. 11-0721 and a methodology was agreed upon with Staff. There is simply no need to change this calculation now, and such a change would be inconsistent with the FERC Form 1 foundation of the formula rate.

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Respectfully submitted,

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